IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

OP.No. 29672 of 2001(G)

PETITIONERS:

---

1. THE THIRUMBADI RUBBER CO. LTD.
   "COWCOODY CHAMBERS"
   234-A, RACE COURSE ROAD,
   COIMBATORE - 641 018.

2. H.C. LAKHANI,
   DIRECTOR, THE THIRUMBADI
   RUBBER CO. LTD,
   234-1, RACE COURSE ROAD,
   COIMBATOE - 641 018.

BY ADV. SRI.P.BALACHANDRAN

RESPONDENTS:

---

1. JOINT COMMISSIONER OF INCOME TAX (ASSMT),
   SPECIAL RANGE - I, ERNAKULAM.

2. INSPECTING ASSISTANT COMMISSIONER (SPL)
   AGRICULTURAL INCOME TAX & SALES TAX,
   KOZHIKODE.

3. UNION OF INDIA REPRESENTED BY
   SECRETARY TO REVENUE DEPARTMENT,
   MINISTRY OF FINANCE, CENTRAL BLOCK,
   NEW DELHI - 110 001.

4. CENTRAL BOARD OF DIRECT TAXES,
   DEPARTMENT OF REVENUE,
   MINISTRY OF FINANCE,
   NEW DELHI - 110 001.

5. COMMISSIONER OF INCOME TAX,
   CR BUILDINGS, I.S. PRESS ROAD,
   COCHIN - 682 018.

BY ADV. SRI.C.P.RAVIKUMAR, ADDL.CGSC
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. 48172 OF 2001 IN O.P. 29672 OF 2001.

DISMISSED.

13.12.2007. SD/- K.M. JOSEPH, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : A TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX, COCHIN.

EXT. P2 : A TRUE COPY OF THE ASSESSMENT ORDER UNDER THE AGRICULTURAL INCOMETAX ACT.

EXT. P3 : A TRUE COPY OF THE ASSESSMENT ORDER.

EXT. P4 : A TRUE COPY OF THE LETTER BY THE PETITIONER TO R1.

EXT. P5 : A TRUE COPY OF THE LETTER BY R1 TO THE PETITIONER.

EXT. P6 : A TRUE COPY OF THE LETTER BY THE PETITIONER TO R1.

EXT. P7 : A TRUE COPY OF THE ASSESSMENT ORDER.

EXT. P7(a) : A TRUE COPY OF THE RECTIFICATION ORDER BY R1.

EXT. P8 : A TRUE COPY OF THE ORDER UNDER THE KERALA AGRL. INCOME TAX ACT, 1991.

EXT. P9 : A TRUE COPY OF THE ASSESSMENT ORDER FOR 98-99.

EXT. P10: A TRUE COPY OF THE RECTIFICATION ORDER BY R1.

EXT. P11 : A TRUE COPY OF THE ORDER UNDER THE KERALA AGRL. INCOME TAX ACT, 1991.

EXT. P12 : A TRUE COPY OF THE ORDER OF THE DY.COMMISSIONER OF INCOME TAX (APPEALS) COMMERCIAL TAXES, KOZHIKODE.

K.M.JOSEPH, J.

- -

O.P. No.29672 of 2001

- -

Dated this the 13th day of December, 2007

JUDGMENT

Heard counsel for the petitioner and the learned Standing Counsel Sri. George K. George, appearing on behalf of the Department. It is common case that the question at hand is covered in favour of the petitioner.

2. Petitioner calls in question Exts.P1, P3, P7, P7(a), P9 and P10 orders passed under the Indian Income Tax Act. Apparently the question is whether income derived by the petitioner when latex is converted into centrifuged latex, the manufacturing activity makes the income exigible to Income Tax Act. That matter engaged the attention of the Central Board, which has issued a Circular, which is produced in 261 ITR 158. As per the Circular, it is submitted by the learned Standing Counsel that in respect of assessments prior to 2002-2003 if the assessee has paid agricultural income tax under the Agricultural Income tax Act on the whole of the income, no proceedings under Section 147 or under Section 263 of the Income-tax Act should be initiated. If tax is not paid by the assessee under the Agricultural Income Tax Act in respect of the said years, the income, which is to be treated as agricultural income, and which is to be

treated as income under the Income-tax Act shall be apportioned and the tax liability fixed accordingly. It is pointed out that the rule has been inserted as Rules 7A and 7B of the Income-tax Rules.

3. In such circumstances, the primary question to be considered would be as to whether petitioner has paid agricultural income-tax in respect of the assessments in question. The assessments in question relates to the periods prior to 2002. Accordingly, the Original Petition is disposed of as follows:

There will be a direction to the first respondent to consider the question as to whether the petitioner has effected payments under the Kerala Agricultural Income-tax in respect of its income derived from conversion of latex into centrifuging latex for the assessment years in question. If it is found by the first respondent that on the basis of the materials produced before him by the petitioner, petitioner has paid tax under the Agricultural Income-tax Act in respect of the income derived from conversion into centrifuged latex, the proceedings raised against the petitioner as impugned in this writ petition shall stand dropped in terms of the Circular. If the first respondent on the other hand finds that the petitioner has not paid tax in respect of centrifuged latex for the years in question, proceedings as contemplated under Rules 7A and 7B of the Rules can be taken against the

petitioner for those assessment years. The first respondent shall complete this process within a period of one month from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

sb

K.M. JOSEPH, J.

O.P. No.29672 of 2001

JUDGMENT

13.12.2007.